



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 13TH DAY OF SEPTEMBER 2024 / 22ND BHADRA, 1946

CRL.MC NO. 6319 OF 2024

CRIME NO.752/2024 OF Museum Police Station, Thiruvananthapuram

AGAINST THE ORDER DATED 15.06.2024 IN CRMC NO.1466 OF 2024 OF

ADDITIONAL SESSIONS COURT - V, THIRUVANANTHAPURAM

PETITIONER/PETITIONER NO.1/ACCUSED NO.1:

SUNIL MATHEW
AGED 44 YEARS, S/O. BABY MATHEW,
MANAGING EDITOR, I2I NEWS,
ALTHARA BUILDINGS, JAWAHAR NAGAR P.O.,
THIRUVANANTHAPURAM, PIN - 695003

BY ADVS.
SRI.SOORAJ T.ELENJICKAL
SMT.HELEN P.A.
ADV.STEPHANIE SHARON
SRI.ATHUL ROY
SRI.INDRAJITH DILEEP

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

- 1 THE STATION HOUSE OFFICER
MUSEUM POLICE STATION,
THIRUVANANTHAPURAM, PIN - 695033
- 2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, KOCHI, PIN - 682031
(CRIME NO. 752/2024 OF MUSEUM POLICE STATION,
THIRUVANANTHAPURAM)



SMT. SREEJA V. , PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
13.09.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**"C.R."****BECHU KURIAN THOMAS, J.****-----
Crl.M.C No.6319 of 2024
-----**Dated this the 13th day of September, 2024**ORDER**

Petitioner challenges one of the conditions imposed upon him while granting anticipatory bail.

2. The Supreme Head of the Believers Church - Sri. K.P. Yohannan alias Moran Mar Athanasius Yohan Metropolitan is alleged to have died in an accident during a visit to the United States of America. Petitioner who claims to be the Managing Editor of a YouTube news channel called 'i2i News' alleges that he, as a professional journalist, obtained information during his investigative journalism that there was foul play behind the death of the Bishop and filed complaints before the State Police Chief with all good faith. A petition dated 28-05-2024 has been submitted by the petitioner before the State Police Chief.

3. In the meantime, a complaint was filed by another Bishop of the Believers Church, alleging that on 09-05-2024 and 21-05-2024, the second accused had aired false news through his news channel - the first accused, stating that the death of the Bishop was not accidental but was the result of a planned murder. It was also alleged that the third accused demanded



advertisements on the news channel failing which the accused threatened the Church of publishing such false news which would have a tendency to create division among the Church members.

4. Based on the above complaint dated 24-05-2024, FIR No.752 of 2024 of Museum Police Station, Thiruvananthapuram, was registered on 29-05-2024 alleging offences under sections 153, 120B and 506 of the Indian Penal Code, 1860 apart from Section 120(o) of the Kerala Police Act, 2011 with the news channel as the first accused, petitioner as the second accused and a marketing executive of the channel as the third accused. Later, section 384 IPC was also added and hence petitioner sought protection from arrest. While granting anticipatory bail to the petitioner, the learned Sessions Judge imposed the condition that he shall not air any news related to the death of Sri. K.P.Yohannan until his petition before the State Police Chief is disposed off. The said condition is challenged in this petition under section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

5. I have heard Sri. Sooraj Thomas Elanjickal, the learned Counsel for the petitioner as well as Smt. Sreeja V., the learned Public Prosecutor.

6. Concededly, petitioner is a journalist operating a news channel by name 'i2i News'. He is alleged to have published news relating to the death of the Bishop of Believers Church portraying it to be a murder and not an accidental death. Petitioner has already filed complaints before the State Police Chief to investigate into the allegation. The information allegedly collected by him is stated to have been published through his news channel on two different days. The only non-bailable offence alleged against the accused is



under section 384 IPC. The learned Sessions Judge felt it appropriate to grant anticipatory bail to the petitioner but imposed conditions which included a restraint on publishing any news relating to the death of the said Bishop.

7. The question raised relates to the freedom of the press vis-a-vis conditions that can be imposed in a bail order. While penning this judgment, this Court is reminded of the words of Nobel Laureate Albert Camus that “*A free press can, of course, be both good and bad, but, most certainly, without freedom, the press will never be anything but bad*”. Freedom of the press is a prerogative that no country can ill afford to renounce. However much people may hate a free press, its absence leads to curtailment of democratic rights and even liberty. The absence of a free press has been said to be the absence of democracy. The said freedom is however not absolute and is subject to reasonable restrictions. Restrictions can be imposed in the exercise of such freedom in appropriate circumstances. The question that needs resolution here is whether such restrictions can be imposed as part of the conditions of bail.

8. Anticipatory bail was granted to the petitioner under section 438 Cr.P.C. Under sub-clause (2) of section 438 Cr.P.C, the court has the power to impose conditions while granting bail including those that can be imposed under section 437(3) Cr.P.C. The latter section permits conditions that are required in the interests of justice as considered necessary and also those that the accused shall not commit similar offences.

9. In a recent decision of the Supreme Court in **Frank Vitus v. Narcotics Control Bureau and Others** (2024 INSC 479), after referring to



the decisions in **Kunal Kumar Tiwari alias Kunal Kumar v. State of Bihar and Another** [(2018) 16 SCC 74] and **Munish Bhasin and Others v. State (Government of NCT of Delhi) and Another** [(2009) 4 SCC 45] it was observed that conditions of bail cannot be fanciful, arbitrary or freakish and further that even a convict is not deprived of all his fundamental rights except those according to procedure established by law.

10. Conditions that can be imposed while granting bail cannot be arbitrary or fanciful and cannot be in total oblivion of the purpose of imposing such conditions. Though, while granting bail, conditions can be imposed, they must be proportional to the reason for imposing them and a balance has to be struck between the liberty of the accused, his right to a fair trial and the need to ensure his participation during trial. Though a condition can be imposed that the accused shall not indulge in similar offences, restricting the exercise of fundamental rights of an accused under the cover of such a condition is not legally appropriate. In fact, conditions that may have a tendency to deprive the accused of his rights ought not to be imposed by courts as held in the decision in **Parvez Noordin Lokhandwalla v. State of Maharashtra and Another** [(2020) 10 SCC 77].

11. Directions which are in the nature of blanket orders restricting the right of a person to express an opinion cannot be issued under the guise of imposing conditions while granting bail. Under Article 19(1)(a) of the Constitution, a person is entitled to the right to freedom of expression. The said right is subject only to reasonable restrictions as provided in Article 19(2) of the Constitution. Expression of an opinion in relation to an incident certainly



falls within the right contemplated under Article 19(1)(a) of the Constitution of India. Many a time, these expressions or opinions by individuals have resulted in probes that have led to startling revelations. Restricting the right to air such views would be counter-productive. If in case such an opinion amounts to a criminal offence, certainly, the aggrieved are entitled to seek appropriate reliefs as the law enjoins upon them. Expression of opinion on public platforms may invite those responsible for punitive or compensatory actions as well. However such probabilities cannot be a reason to restrict the right of a person from expressing his opinion or airing his views, that too, as a condition while granting bail. Restricting the publishing of any news relating to the death of a person is in effect prejudging the issue that such broadcasts of news would amount to an offence. A condition of that nature has all the trappings of a gag order.

12. The courts have quite often come down heavily upon gag orders being issued unless such gag orders are extremely essential in the circumstances. In **Arnab Ranjan Goswami v. Union of India and Others** [(2020) 14 SCC 12], the Supreme Court had observed that the exercise of journalistic freedom lies at the core of speech and expression protected by Art.19(1)(a) and as a media journalist the airing of views on television-shows is in the exercise of the said fundamental right. It was further noted, in support of the said right, that the freedoms available in India will rest safe as long as journalists can speak truth without being chilled by a threat of reprisal. The Court went on to observe that the right of a journalist to ensure that an informed society exists is required to be protected though the said right is no



higher than the right of the citizen to speak and express. The Court further held that free citizens cannot exist when the news media is chained to adhere to one position.

13. Similarly in the decision in **Muhammed Zubair v. State of NCT of Delhi and Others** [2022 INSC 736] it has been held that a blanket order preventing a person from tweeting cannot be imposed. The following observations are apt in the instant case:

"Merely because the complaints filed against the petitioner arise from posts that were made by him on a social media platform, a blanket anticipatory order preventing him from tweeting cannot be made. A blanket order directing the petitioner to not express his opinion - an opinion that he is rightfully entitled to hold as an active participating citizen - would be disproportionate to the purpose of imposing conditions on bail. The imposition of such a condition would tantamount to a gag order against the petitioner. Gag orders have a chilling effect on the freedom of speech. According to the petitioner, he is a journalist who is the co-founder of a fact checking website and he uses Twitter as a medium of communication to dispel false news and misinformation in this age of morphed images, clickbait, and tailored videos. Passing an order restricting him from posting on social media would amount to an unjustified violation of the freedom of speech and expression, and the freedom to practice his profession."

14. Petitioner is entitled to have an opinion relating to the death of the Bishop of the Believers Church. He is also entitled to express his views and opinions. This is a facet of his freedom of expression. Petitioner cannot therefore be restrained from expressing his views through a condition in a bail order. However, if his expression of views creates a criminal offence, he may have to face actions as contemplated under law. However, such a possibility cannot be a reason to restrain the exercise of his fundamental right to express



as an individual or his journalistic freedom.

15. In view of the above discussion, this Court is satisfied that condition No.5 in the impugned order dated 15.6.20204 to the extent it restrains the accused from broadcasting any news or giving any interview relating to the death of Sri. K.P.Yohannan on any news channel or any newspaper is an unreasonable condition. The said condition No.5 in the impugned bail order, to the above extent, is hence deleted.

This Crl.M.C is allowed.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

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